

U.S. Department of Justice



Sept 27 2007

United States Attorney

Southern District of New York

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The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

September 25, 2007

Honorable Alvin K. Hellerstein
United States District Judge
United States Courthouse
500 Pearl Street
New York, NY 10007

Re: United States v. Craig Francis,
07 Cr. 478 (AKH)

Dear Judge Hellerstein:

Sentencing in the above-captioned matter is currently scheduled for October 24, 2007. The Government respectfully requests that this Court conduct a hearing, pursuant to *United States v. Fatico*, 579 F.2d 707 (2d Cir.1978), to resolve factual disputes that are material to the applicable sentencing range under the United States Sentencing Guidelines.

As the Court may recall, and as the Presentence Investigation Report notes at paragraph 14, the parties dispute the number of firearms that the defendant stole, possessed, and sold as part of the conduct to which he pled guilty before Your Honor on July 3, 2007. The Government contends, and intends to establish at a *Fatico* hearing, that the defendant stole and sold 9 guns in addition to the two he admitted stealing in his plea allocution. A copy of the plea allocution is attached for the Court's convenience.

The Court made clear at the plea proceeding that resolution of this factual dispute carries significant implications for the defendant's sentencing. If the defendant is held responsible only for only the two guns he has already admitted, then his offense level would be 12, yielding a guidelines range of 10-16 months' imprisonment.

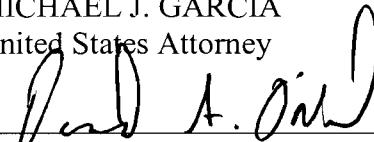
If, however, the Government establishes that the defendant stole and sold 9 additional guns, then he will be subject to two separate 4-level increases in his base offense level: one pursuant to U.S.S.G. § 2K2.1(b)(1)(B), because the offense involved between 8 and 24 firearms; and a second pursuant to U.S.S.G. § 2K2.1(b)(5), because the defendant engaged in the "trafficking of firearms." In addition, the Court indicated at the plea proceeding that if it finds for the Government on the number of firearms involved, it would likely deny the defendant the 3-level decrease in base offense level for acceptance of responsibility. Accordingly, if the Government establishes by a preponderance of the evidence that the offense involved 11 guns,

the defendant's offense level will be 22, resulting in a guidelines range of 41-51 months. Accordingly, the Court's factual findings would change the defendant's sentencing guidelines range by as many as 41 months' imprisonment.

The Government anticipates that at a *Fatico* hearing it would call several witnesses and believes that it could present its case in two to three hours.

Respectfully submitted,

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